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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,932	06/29/2006	Robert Lewis Clarke	100770.00/25US	2466
24392 7590 06/21/2010 FISH & ASSOCIATES, PC ROBERT D. FISH 2603 Main Street Suite 1000 Irvine, CA 92614-6232				
EXAMINER				
PHASGE, ARUN S				
ART UNIT		PAPER NUMBER		
1795				
NOTIFICATION DATE		DELIVERY MODE		
06/21/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

rfish@fishiplaw.com
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Office Action Summary

Application No.

10/596,932

Applicant(s)

CLARKE ET AL.

Examiner

Arun S. Phasge

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 16-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 10/5/06

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group I in the reply filed on 4/2/10 is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bradbury et al. (Bradbury), U.S. Patent 5,306,400 in view of Velin et al. (Velin), WO 02/40406 A1.

Bradbury discloses a method of treating a solution comprising nitrate and a metal halide, such as sodium chloride (see col. 2, lines 56-60) comprising:

(I) subjecting the solution to an electrochemical reduction to thereby reduce the nitrate to at least ammonia (see col.2, line 50);

(II) subjecting the solution from step (I) to an electrochemical oxidation to thereby oxidize the ammonia to nitrogen (see col. 2, line 55), and

(III) subjecting the solution from step (II) to an electrochemical reduction which would inherently reduce the metal hypohalite formed by the anodic oxidation of chloride (col. 2, line 60) to the metal halide (see figure 4 and col. 23-30).

Bradbury further discloses a step of eluting an ion exchange column to which nitrate is bound with an eluent that includes a metal halide to thereby form the solution comprising the nitrate and the metal halide and using the regenerated halide from the electrolytic treatment to elute the nitrate from the ion exchange resin (see col. 4, lines 1-10).

Bradbury further discloses a value that falls within the claimed range (see example 1 in columns 5-6). The patent further teaches the use of a membrane (see col. 6, lines 3-10).

The Bradbury patent fails to disclose the concentration of the before and after treatment as claimed.

Normally, change in concentration is not patentable modification; however, such change may impart patentability to process if ranges claimed produce new and unexpected result which is different in kind and not merely in degree from results of prior art; such ranges are termed "critical" ranges, and applicant has burden of proving such criticality; even though applicant's modification results in great improvement and utility over prior art, it may still not be patentable if modification was within capabilities of one skilled in art; more particularly, where general conditions of claim are disclosed in prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. *In re Aller et al*, 105 U.S.P.Q. 233 CCPA (1955).

The Bradbury patent fails to disclose the steps performed in a single electrochemical compartment, which would be accomplished by the reversal of polarity. The patent further fails to teach the same electrodes for the anode and cathode.

The Velin patent is cited to show another process for the removal and destruction of nitrate in water (see abstract). The reference further discloses that the reversal of the electrode reactions can be accomplished by either redirecting the electrolyte from one to the other or the reversing of polarities of the electrodes (see page 3, fourth paragraph). The patent further teaches the use of conventional material, such as platinised titanium and carbon materials, such as graphite which would read upon the carbon felt claimed (see page 3 third paragraph).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify Bradbury by the teachings of Velin.

One having ordinary skill in the art would have been motivated to do this modification, because Velin patent teaches the electrolytic removal and destruction of nitrates from solutions by the reversal of polarity and the use of the same types of electrodes.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun S. Phasge whose telephone number is (571) 272-1345. The examiner can normally be reached on MONDAY-THURSDAY, 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nam X. Nguyen can be reached on (571) 272-1342. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Arun S. Phasge/
Primary Examiner, Art Unit 1795

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